



## Blanket Order



Contract ID: 60100000000000000000000000006940  
Version: 1  
Bid Number: 0000017319  
Contract Date: 02/22/2017  
Services >\$100K

To:  
East Point Holdings, Inc.  
2814 Bill Owens Pkwy Ste 400

Agency To Invoice:  
See Specific Blanket Release

Longview TX 75605

VENDOR ID: 1752905872-500

BUYER: 00000026659 - Jones, Jason

Line Item	Item Description	Quantity	Unit	Unit Cost	Extended Cost
1	96239050501 HAULING SERVICES, AGGREGATE AND OTHER ROADWAY MATERIAL, Minimum 10 cubic yard end dump truck  Hourly rate for the transport of TxDOT materials to designated locations in the San Angelo Dist	400	HOU	\$75.00	\$30,000.00
2	96239050519 HAULING SERVICES, AGGREGATE AND OTHER ROADWAY MATERIAL, 20 CUBIC YARD END DUMP TRUCK  Hourly rate for the transport of TxDOT materials to designated locations in the San Angelo District.	400	HOU	\$95.00	\$38,000.00
3	96239050535 HAULING SERVICES, AGGREGATE AND OTHER ROADWAY MATERIAL, 20 CUBIC YARD BELLY DUMP TRUCK  Hourly rate for the transport of TxDOT materials to designated locations in the San Angelo District.	400	HOU	\$95.00	\$38,000.00
4	96239056003 HAULING SERVICES, AGGREGATE AND OTHER ROADWAY MATERIAL, TRUCK TRACTOR WITH FLATBED TRAILER  Hourly rate for the transport of TxDOT materials to designated locations in the San Angelo Dist	400	HOU	\$95.00	\$38,000.00
5	96239056029 HAULING SERVICES, AGGREGATE AND OTHER ROADWAY MATERIAL, RUCK TRAILER TRACTOR WITH FLATBED TRAILER AND PIGGYBACK FORKLIFT	400	HOU	\$95.00	\$38,000.00

CONTINUED

*Glenn Hagler CPRO,CTPM*

Glenn R. Hagler

Issuing Employee Signature

Director, Procurement Division  
Issuing Employee Title

Failure to Deliver: If the contractor fails to deliver these supplies by the promised delivery date or a reasonable time thereafter, without giving acceptable reasons for the delay, or if supplies are rejected for failure to meet specifications, the State reserves the right to purchase specified supplies elsewhere, and charge the increase in price and cost of handling, if any, to the contractor. No substitutions or cancellations permitted without prior approval of the State.



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Line Item	Item Description	Quantity	Unit	Unit Cost	Extended Cost
6	<p>Hourly rate for the transport of TxDOT materials to designated locations in the San Angelo District.</p> <p>96239410000 HAULING SERVICES, STAND-BY TIME</p> <p>This line is for demurrage fees for the San Angelo District. Demurrage is a time delay in excess of one hour where a driver is required to remain at a TxDOT location until unloaded.</p> <p>The following comments apply to the entire Order This blanket purchase order is to provide transportation services of bulk roadway maintenance materials to and from multiple vendor and TxDOT locations Ref Attachment A - Locations to support maintenance and emergency operations.</p> <p>Term of Service: Service shall begin February 22, 2017 and continue through February 21, 2018 with the option to renew for 3 additional like periods of time at the same terms and conditions plus any approved changes.</p> <p>Service shall be performed in accordance with the documents noted below. In the event of any conflict, terms contained in the documents shall prevail in the order listed below:</p> <p>* Blanket Purchase order 60100000000000000000000000006940</p> <p>* Specification No. TxDOT 962-39-05, Dated November 2015</p> <p>*Attachment A - Locations</p> <p>*TxDOT Terms and Conditions, Revised September 2016</p> <p>*Payment shall be in accordance with Part 4.04, paras. (c) of the TxDOT Terms and Conditions.</p>	400	HOU	\$75.00	\$30,000.00

**CONTINUED**



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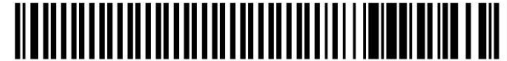
BUYER: 00000026659 - Jones, Jason

Line Item	Item Description	Quantity	Unit	Unit Cost	Extended Cost
	<p>*Payment: payment will be made in accordance with the Texas Prompt Payment Act, TGC, Subtitle F, Chapter 2251. Vendor shall submit one copy of a correct itemized invoice showing the purchase order number, payee ID, remit to address, and phone number on invoice. Vendors may submit an electronic invoice. All electronic invoices shall be sent to the email address noted on the PO. All invoices received will be filed for future reference and you will receive a receipt confirmation email. To avoid the confusion of duplicate invoices, please do not send other copies of this invoice via regular mail, fax or other means. On emails for electronic invoices, include the company name (as it appears on the invoice) and the PO number in the subject line to assist in identifying and processing your invoices in a timely manner.</p> <p>TxDOT will not incur any penalty for late payment if payment is made in 30 days or less from receipt of goods or services and a correct invoice, whichever is later. Note: warrants will not be issued to a vendor without a current Texas identification number.</p> <p>*NOTE TO VENDORS PARTICIPATING IN THE EPP: Send invoices to txdot-invoice@epp.oxygen-finance.com if vendor is participating in the Early Payment Program (EPP), not the address on page 1 of the purchase order. If you are not a participant, but would like to enroll, please send an email to txdotonboarding@oxygen-finance.com or call a Program Specialist at 866-515-3860 #4.</p> <p>* Insurance shall be in accordance with Part 5.</p> <p>* Insurance Required: -Worker's Compensation -Commercial General Liability -Business Automobile Policy (Commercial Automobile Policy)</p> <p>* Form 1560, Certificate of Insurance for Services</p> <p>Worker's Compensation Insurance: Vendor shall</p>				

**CONTINUED**



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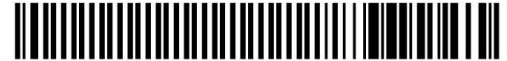
Line Item	Item Description	Quantity	Unit	Unit Cost	Extended Cost
	<p>provide form 1560 certificate of insurance for persons providing all or part of the services regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes but is not limited to, independent contractors, subcontractors, leasing companies, motor carriers, and owner-operators.</p> <p>Per part 5, Para. 5.01 of the TxDOT Terms and Conditions, the vendor shall provide the required TxDOT insurance form upon notice of award. Vendor shall not perform services under the purchase order until this form is received by TxDOT. Failure to provide proof of insurance within the time frame requested by TxDOT may result in the vendor's response being declared non-responsive and the purchase order being awarded to the next responsive, responsible respondent.</p> <p>TxDOT has determined that subcontracting opportunities are probable in connection with this purchase order.</p> <p>Vendor has determined that it is not in its best interest to subcontract any portion of this blanket purchase order.</p> <p>The vendor shall submit the HSP Prime Contractor response progress assessment report monthly to the TxDOT Contract Manager.</p> <p>The reports shall be submitted monthly even during the months the vendor is not invoicing TxDOT.</p> <p>Failure to provide this report will result in payment being withheld until the report is received.</p> <p>Quantities are estimates only. No guarantee of any minimum or maximum purchase is made or implied. TxDOT will only order the amount needed to satisfy operating requirements, which may be more or less than indicated. The vendor will be notified in writing by purchase order change notice for any requirement changes.</p>				

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Line Item	Item Description	Quantity	Unit	Unit Cost	Extended Cost
	<p>Service and Delivery Authorization</p> <p>The vendor shall perform service or deliver material only after receiving a blanket release purchase order which is TxDOT's authorization to proceed. The blanket release purchase order should contain at a minimum: service to be performed, the delivery, the hours deliveries are accepted and when work will be performed, the master blanket order number, and the name of the TxDOT representative placing the order with contact information. The blanket release purchase order will be emailed to the vendor's point of contact noted on the blanket purchase order.</p> <p>TxDOT may refuse to pay the vendor for services performed or goods delivered without a blanket release purchase order.</p> <p>The blanket release purchase order number must be noted on the invoice or the invoice will be returned for correction.</p> <p>The State of Texas will permit "unit price" adjustments upwardly or downwardly when correlated with the price index specified herein. Unless otherwise indicated, the price index shall be the specified index as published by the Bureau of Labor Statistics, Washington, DC 20212. Unit prices may be adjusted for each renewal period in accordance with changes in the index. The allowable percent change shall be calculated by subtracting the baseline index from the index announced for the month in which the renewal option is exercised and dividing the result by the baseline index. The allowable percent change shall be rounded to the nearest one-hundredth of one percent and shall be the maximum unit price adjustment permitted, except that the vendor may offer price decreases in excess of the allowable percent change.</p> <p>The CPI-W baseline index month and year for the original term of service is: 02/17. Unit prices may be adjusted from this base for the first</p>				

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Line Item	Item Description	Quantity	Unit	Unit Cost	Extended Cost
	<p>renewal period in accordance with changes in the index.</p> <p>Vendor Point-of-Contact for Services: Name: Kenneth Hannon Telephone:903-375-3310 Fax Number:903-295-3518 Email Address: kebholding@yahoo.com</p> <p>TxDOT Purchasing Point of Contact Purchaser: Jason Jones, CTPM Telephone: 915-790-4347 Email Address: Jason.Jones@TxDOT.GOV</p> <p>TxDOT Contract Manager Name: James Gilbert Telephone No:325-947-9343 Email: James.Gilbert@txdot.gov</p>				
Contract Total:				\$212,000.00	

## TEXAS DEPARTMENT OF TRANSPORTATION

SPECIFICATION NO.  
TxDOT 962-39-05  
DATED: NOVEMBER 2015

### HAULING SERVICES, AGGREGATE AND OTHER ROADWAY MATERIAL

#### PUBLICATION

This specification is a product of the Texas Department of Transportation (TxDOT). It is the practice of TxDOT to support other entities by making this specification available through the National Institute of Governmental Purchasing (NIGP). This specification may not be sold for profit or monetary gain. If this specification is altered in any way, the header, and any and all references to TxDOT must be removed. TxDOT does not assume nor accept any liability when this specification is used in the procurement process by any other entity.

1. SCOPE: This solicitation is to provide transportation services of bulk roadway maintenance materials to and from multiple vendor and TxDOT locations Ref Attachment A - Locations to support maintenance and emergency operations. Emergency operations may include providing services before, during and after inclement weather, a natural disaster, an act of terrorism, or other catastrophic event.
2. DEFINITIONS OF TERMS AND ACRONYMS
  - 2.1. CDL – Commercial Driver License
  - 2.2. CGWR – Combined Gross Weight Rating
  - 2.3. DEMURRAGE – The time, in excess of one hour, a driver is required to remain at a TxDOT designated location until loaded, unloaded, or released by an authorized TxDOT or disaster relief designee in the event of inclement weather, a natural disaster, an act of terrorism or other catastrophic event.
  - 2.4. IFB – Invitation for Bid
  - 2.5. OSHA – Occupational Safety and Health Administration
  - 2.6. POC – Point of Contact
  - 2.7. PER DIEM – Travel expenses for services requiring an overnight stay
  - 2.8. RAP – Recycled Asphalt Paving
  - 2.9. STAND BY – Time from the time the vendor is put on notice that services may be required until the vendor is released or called to a job site.
  - 2.10. TxDOT – Texas Department of Transportation
3. APPLICABLE LAWS AND STANDARDS: The vendor shall provide the specified service requirements in accordance with all applicable federal, state, and local laws, standards and regulations, including, but not limited to:
  - 3.1. Texas Motor Vehicle and Traffic Laws

- 3.2. Code of Federal Regulations and United States Department of Transportation requirements governing the transportation of freight on the state highway system.
  - 3.3. Texas Transportation Code, Title 7 – Vehicle and Traffic, Subtitle C – Rules of the Road, Chapter 545 – Operation and Movement of Vehicles
  - 3.4. Texas Transportation Code, Title 7 – Vehicles and Traffic, Subtitle F – Commercial Motor Vehicles, Chapter 642 – Identifying Markings on Commercial Motor Vehicles
4. RESPONDENT QUALIFICATIONS: The respondent shall:
- 4.1. Be a company engaged in the business of providing bulk material transportation services for a minimum of two years within the last five years. Recent start-up businesses do not meet the requirements of this solicitation.  
  
NOTE: A start-up business is defined as a new company that has no previous operational history or expertise in the relevant business and is not affiliated with a company that has that history or expertise. Two companies are affiliated if the two companies have a common parent company or if one is the parent or subsidiary of the other.
  - 4.2. Be in good financial standing and current in payment of all taxes and fees such as state franchise fees. TxDOT reserves the right to request a copy of the respondent's audited or un-audited financial statement.  
  
TxDOT may request a statement on company letterhead from the president, owner, or financial officer certifying that the company is in good financial standing and current in payment of all taxes and fees.  
  
When financial statements are requested, TxDOT will review the respondent's audited or un-audited financial statement to this solicitation in accordance with Texas Government Code, Title 10, Subtitle D, Section 2156.007 to evaluate the sufficiency of the respondent's financial resources and ability to perform the contract or provide the service required in the solicitation. TxDOT will be the sole judge in determining the sufficiency of the respondent's financial resources and ability to perform the contract or provide the service. Factors to be reviewed include:
    - 4.2.1. Balance sheets
    - 4.2.2. Net working capital
    - 4.2.3. Current asset ratio
    - 4.2.4. Liquidity ratio
    - 4.2.5. Auditor(s) notes
    - 4.2.6. Any notes to the financial statements



5. RESPONDENT REFERENCES: The respondent should submit a minimum of three references to substantiate the qualifications and experience requirements for similar services completed for two years within the last five years. References shall illustrate respondent's ability to provide the services outlined in the specification. References shall include name, point of contact, telephone number, and dates when services were performed. The response may be disqualified if TxDOT is unable to verify qualification and experience requirements from the respondent's references. The response may be disqualified if TxDOT receives negative responses. TxDOT will be the sole judge of references (Ref. Respondent References).
6. RESPONDENT PERSONNEL QUALIFICATIONS: The respondent shall provide a point of contact with a minimum of two years experience within the last five years in freight transportation services.
7. VENDOR REQUIREMENTS: The vendor shall:
  - 7.1. Adhere to the TxDOT Terms and Conditions identified on the solicitation.
  - 7.2. Provide all labor, materials and equipment necessary to meet requirements of the specified services throughout the term of the purchase order.
  - 7.3. Provide a POC with telephone and fax number for services and an emergency number that is answered 24 hours per day, seven days per week.
  - 7.4. Provide all equipment required to perform the service under the purchase order.
  - 7.5. Provide the minimum number of trucks with drivers as noted on the solicitation (Ref Para. 10.).
  - 7.6. Provide structurally sound, sufficiently powered trucks, truck-tractors, and companion trailers to transport the required loads legally on the state highway system:
    - 7.6.1. Trucks shall be equipped with a strobe light mounted in a location that is visible from the front and rear of the vehicle
    - 7.6.2. Furnish and display the appropriate hazardous material placard(s) when transporting hazardous materials.
    - 7.6.3. Maintain all vehicles used during the term of service according to Texas Department of Public Safety (DPS) standards for commercial vehicles.
    - 7.6.4. Keep the annual safety inspection and vehicle registration on the equipment current at all times during the term of service.
  - 7.7. ENSURE DRIVERS
    - 7.7.1. Have a valid CDL as required by Texas law and a hazardous materials endorsement on CDL for drivers hauling hazardous materials.
    - 7.7.2. Have a minimum one year experience in hauling roadway maintenance materials within the last three years.
    - 7.7.3. Have a minimum one year experience in the correct handling, securing and transportation of roadway maintenance materials.
    - 7.7.4. Have a minimum one year experience completing required shipping documents.

- 7.7.5. Speak, read, write, and understand English.
- 7.7.6. Safely move and lift items weighing up to 70 pounds.
- 7.7.7. Have no driving under the influence (DUI) conviction or driving while intoxicated (DWI) conviction on driving record within the past three years.
- 7.7.8. Have no more than two moving violations on driving record within the past three years.
- 7.7.9. Wear a clearly visible identifying name badge with the company name or company logo, or a uniform with the personnel's name and company name or logo clearly marked on the uniform.
- 7.7.10. Present and maintain a neat appearance at all times when providing service for TxDOT.
- 7.7.11. Have in their possession a functioning, charged cell phone able to place and receive calls anywhere within the delivery area. Cell phone numbers shall be furnished to the TxDOT POC, and maintained current and operational at all times.
- 7.8. Immediately remove any employee TxDOT determines to be incompetent or whose conduct becomes detrimental to the performance of this service or to the safety of the traveling public.
- 7.9. Notify TxDOT in the event of vehicle downtime or mechanical breakdown and provide alternate arrangements to ensure scheduled deliveries are completed as agreed to by TxDOT and the vendor.

NOTE: TxDOT will not pay for vehicle downtime or mechanical breakdown.

8. RESPONDENT PERSONNEL REQUIREMENTS

- 8.1. The POC's primary responsibility shall be the day-to-day operation of the service in accordance with the requirements of the purchase order.
- 8.2. The POC shall be a permanent staff employee and shall serve as a constant primary point of contact for TxDOT.

9. SERVICE REQUIREMENTS: The vendor shall:

- 9.1. Begin work within 21 calendar days of the award of the purchase order or on the agreed upon date between TxDOT and the vendor.
- 9.2. NON-EMERGENCY CALL-OUT: Verbally respond to requests for non-emergency service within four hours and be on site to perform services within 48 hours after being contacted. The vendor shall coordinate with the designated TxDOT representative.
- 9.3. EMERGENCY CALL-OUT: Verbally respond to requests for emergency services within one hour and be on site to perform services within 1 ½ hours after being contacted. The designated TxDOT representative will notify the vendor if a call constitutes an emergency situation. The vendor shall contact the designated TxDOT representative upon arrival at the job site. Services shall be performed on a 24 hour, seven day a week basis, including weekends and holidays if deemed necessary by the designated TxDOT representative.

- 9.4. Pick up load at designated location per instructions and complete deliveries as approved by TxDOT POC. With prior approval or at the request from the TxDOT POC or designee, materials may be loaded the day before in order to allow enough time to make the entire delivery run the following day.
- 9.5. Transport only TxDOT materials during scheduled services. Examples of material to be delivered include, but are not limited to: salt, aggregates, flex base, sand, RAP, hot mix and other roadway maintenance materials.
- 9.6. Transport TxDOT materials to designated locations according to the most direct route and unload the material in the locations as directed by the TxDOT POC or designee (Ref. Attachment A - Locations).
- 9.7. Turn over all shipping documentation to on-site personnel, and obtain signature for delivered materials.
- 9.8. Ensure the truck, trailer, and load does not exceed the CGWR. All vehicles and loads shall meet federal, state of Texas, and local weights and measures laws.
- 9.9. Supply tarp and all components necessary to tarp materials during transport.
- 9.10. Not operate any TxDOT equipment.
- 9.11. Notify TxDOT POC or designee when encountering any unforeseen delays, and upon completion of delivery run.
- 9.12. Document wait time, in excess of one hour, when required to remain at a TxDOT designated location until loaded, unloaded or released by an authorized TxDOT POC or disaster relief representative. Demurrage charges shall be invoiced in 15 minute increments (ref. Schedule 1, Pricing).
- 9.13. Make all deliveries between the hours of 8:00 a.m. and 4:00 p.m. local time unless prior arrangements have been made with the TxDOT POC or designee.
- 9.14. Make deliveries in the sequence determined by TxDOT. Deviations shall be approved in advance by TxDOT POC or designee.
- 9.15. Reimburse TxDOT for any materials lost or damaged in transit including the cost of emergency shipment via another delivery method to replace the lost material.
10. VEHICLE AND TRAILER REQUIREMENTS: The vendor shall supply one or more types of the following equipment as noted on the solicitation:
  - 10.1. TYPE 1: Dump Truck, minimum 10 cubic yard capacity. The truck shall be suitable for hauling the fully loaded dump bed without exceeding the vehicle's CGWR or mechanical limitations.
  - 10.2. TYPE 2: Tandem-axle truck-tractor with minimum 20 cubic yard belly dump tandem-axle trailer. The trailer shall have a minimum net payload carrying capacity of 50,000 pounds. The truck-tractor shall be suitable for pulling the fully loaded belly or end dump trailer without exceeding the vehicle's CGWR or mechanical limitations.



- 10.3. TYPE 3: Tandem-axle truck-tractor with minimum 20 cubic yard end dump tandem-axle trailer. The trailer shall have a minimum net payload carrying capacity of 50,000 pounds. The truck-tractor shall be suitable for pulling the fully loaded belly or end dump trailer without exceeding the vehicle's CGWR or mechanical limitations.
  - 10.4. TYPE 4: Tandem-axle truck-tractor with flat-bed trailer. The truck tractor shall be suitable for pulling the fully loaded trailer without exceeding the vehicle's CGWR or mechanical limitations.
  - 10.5. TYPE 5: Tandem-axle truck-tractor with flat-bed trailer and piggy-back forklift. The truck tractor shall be suitable for pulling the fully loaded trailer without exceeding the vehicle's CGWR or mechanical limitations.
11. VENDOR PERFORMANCE: Vendor performance will be monitored on a regular basis by TxDOT.
- 11.1. TxDOT may consider the following performance by the vendor as unsatisfactory performance:
    - 11.1.1. Any occurrence of sending a driver without a valid CDL.
    - 11.1.2. Two occurrences within one year of not providing drivers with an operational and maintained cell phone with coverage in the delivery area.
    - 11.1.3. Any occurrence of not providing the driver's cell phone numbers to the TxDOT POC or designee.
    - 11.1.4. Any occurrence of failure to secure a load with tarp when transporting TxDOT material.
    - 11.1.5. Any occurrence of failure to maintain all vehicles used during the term of service according to DPS standards for commercial vehicles.
    - 11.1.6. Two occurrences within one year of failure to pick up load at the designated location per instructions and complete deliveries by 4:00 p.m. local time the same day, unless otherwise instructed by the TxDOT POC or designee.
    - 11.1.7. Any occurrence of operating TxDOT equipment.
    - 11.1.8. Any occurrence of failure to advise TxDOT of delivery delays.
    - 11.1.9. Two occurrences within one year of failure to provide copies of related shipping documents.
    - 11.1.10. Any occurrence of failure to make deliveries in the sequence determined by TxDOT, unless otherwise instructed by the TxDOT POC or designee.
- NOTE: Unsatisfactory performance may result in a negative vendor performance report, or cancellation of the purchase order, or both.
- 11.2. An exceptional performance determination includes, but is not limited to:
    - 11.2.1. Vendor commended for exceptional customer service, exceptional service provided.



12. PERSONNEL CONTINUITY AND REPLACEMENT

- 12.1. TxDOT recognizes that events beyond the control of the vendor such as the death, physical or mental incapacity, long term illness, or the voluntary termination of employment of the POC and drivers will require the vendor propose a replacement. In the event such a replacement is necessary, vendor agrees that personnel shall not begin work on the project without prior written approval from TxDOT.
- 12.2. If TxDOT determines the POC or a driver is unable to perform in accordance with the service requirements or to communicate effectively; the vendor shall immediately remove that person and provide a replacement within 24 hours of notification.

Proposed replacement personnel shall meet minimum qualifications and have experience comparable to the person(s) being replaced. Replacement personnel shall be provided at no additional cost to TxDOT. Resume(s) and reference(s) may be requested for the proposed replacement(s). TxDOT may reject any replacement if references or past working performance is questionable or unfavorable. TxDOT will be the sole judge of the qualifications of the proposed replacement personnel.

13. VENDOR PERSONNEL SAFETY: The vendor shall provide all required safety equipment and instruct personnel to observe all safety policies, rules and requirements at all times, including, but not limited to, wearing hard hats, safety shoes, goggles, etc.

14. SUBCONTRACTING

- 14.1. Subcontractors providing service under the purchase order shall meet the same service requirements and provide the same quality of service required of the vendor.
- 14.2. No subcontract under the purchase order shall relieve the primary vendor of responsibility for the services.
- 14.3. The vendor shall be the only contact for TxDOT and subcontractor(s).
- 14.4. The vendor shall manage all quality and performance, project management, and schedules for subcontractors. The vendor shall be held solely responsible and accountable for the completion of all work for which the vendor has subcontracted.
- 14.5. TxDOT retains the right to check subcontractor's background and make a determination to approve or reject the use of submitted subcontractor(s). Any negative responses may result in disqualification of the subcontractor.
- 14.6. TxDOT reserves the right to request the removal of vendor's subcontractor staff deemed unsatisfactory by TxDOT.
- 14.7. Subcontracting shall be at the vendor's expense.
- 14.8. During the term of the purchase order, if the vendor determines a need for a subcontractor change, TxDOT shall be notified in writing by the vendor within 30 calendar days of any proposed change. The vendor shall be required to provide references and work history for any proposed subcontractor to TxDOT. No change will be allowed without written authorization by TxDOT.

- 14.9. SOLICITATIONS OVER \$100,000: TxDOT will make an initial determination of whether subcontracting is probable. If TxDOT has determined that subcontracting opportunities are probable, the class and items in which HUBs may be registered will be noted in the solicitation along with the required forms and instructions. RESPONSES THAT DO NOT INCLUDE A COMPLETED HUB SUBCONTRACTING PLAN AS INDICATED ON THE SOLICITATION SHALL BE REJECTED PURSUANT TO TEXAS GOVERNMENT CODE §2161.252(B)
15. CONFLICT OF INTEREST: The vendor, vendor's personnel, and vendor's subcontractor(s) shall affirm not to have nor acquire any interest during the term of the purchase order that would conflict in any manner with the performance of the vendor's obligations in regards to services authorized.
16. PER DIEM: Per diem shall be pre-approved in writing by the designated TxDOT representative. If approved, expenses will be reimbursed as follows:
- 16.1. In-state reimbursement for lodging will be the listed rate on the following GSA website for the specific location and month. Out-of-state lodging will not be reimbursed.
- <https://fmxcpa.state.tx.us/fm/travel/travelrates.php>
- 16.2. The maximum meal reimbursement is \$41. Travelers may substitute all or a portion of the \$41 meal allowance to increase the amount paid for lodging.
17. INVOICING INSTRUCTIONS: The vendor shall provide:
- 17.1. ORIGINAL INVOICE: A comprehensive, itemized, detailed invoice with reference to the basis for each item charged on the purchase order. The original invoice shall be e-mailed to [FIN\\_Invoices@txdot.gov](mailto:FIN_Invoices@txdot.gov), or as otherwise stated on the solicitation, to ensure timely payment and shall include the following:
- 17.1.1. Complete TxDOT purchase order number
- 17.1.2. Vendor Employer Identification Number (EIN)
- 17.1.3. Date and time of service
- 17.1.4. Material or items being transported
- 17.1.5. Physical addresses for the locations where material was picked up and delivered, with a unique load number assigned to each delivery.
- 17.1.6. Driver's name
- 17.1.7. Total hours
- 17.1.8. For emergency events, identify the disaster.
- 17.1.9. When requesting payment for demurrage charges, submit a separate invoice. Include the amount of wait time incurred by the driver at each location and the name of the TxDOT employee authorizing the wait time.
- NOTE: Invoices requiring correction shall be re-submitted with a new invoice date.

- 17.2. COPY OF INVOICE AND SUPPORTING DOCUMENTATION: A copy of the invoice and original documentation that validates the invoice charges shall be e-mailed to TxDOT POC or designee monthly, to include but not be limited to:
  - 17.2.1. Copies of all bills of lading or other documents detailing the material or items transported begin time and end time, loaded and tare weight, if from a materials vendor, truck number or name, and any other applicable information
  - 17.2.2. A copy of the driver's log.
  - 17.2.3. For materials or items being moved from one TxDOT location to another, include the paperwork provided by the TxDOT POC indicating the material or item transported, beginning and ending location, estimated quantity and authorized signature of both the office shipping the material and the office receiving the material.
18. PAYMENT REQUIREMENTS: Payment will be based on the following:
  - 18.1. Payment shall be calculated by multiplying the hourly rate times the total round trip hours to the applicable delivery destination(s) listed on Attachment A – Locations.
  - 18.2. With the exception of TxDOT pre-approved per-diem, no payment will be made for official state holidays (unless otherwise approved by the designated TxDOT designee), lunch hour, illness, or any time when work is not actually performed. No payment will be made for time associated with driver's late arrival to or early departure from the designated work location.
19. TxDOT RESPONSIBILITIES: TxDOT will:
  - 19.1. Provide pick-up and delivery locations.
  - 19.2. Coordinate and schedule loads and notify vendor of required pick-up and delivery time (Ref. Para. 9.2. and 9.3.).
  - 19.3. Attempt to schedule routing with 12-hour maximum round-trip from the point of origin to return.
  - 19.4. Identify any hazardous materials.
  - 19.5. Resolve discrepancies, other than number, weight, or placement of cargo, with the vendor, not the driver.
  - 19.6. Reserve the right to inspect vendor vehicles used in performance of the service and notify the vendor if a vehicle does not meet the requirements noted in the specification (Ref. Para. 3. and 10.).
  - 19.7. Monitor compliance and performance, advise vendor of substandard performance, and work with vendor to resolve performance issues.
20. RESPONSE SUBMISSION
  - 20.1. The following shall be submitted with the response. Failure by the respondent to submit the documentation listed below may disqualify the respondent from further consideration:
    - 20.1.1. Original, signed, dated, and completed IFB



- 20.1.2. Schedule 1 – Respondent Qualifications and Experience
- 20.1.3. Schedule 2 – Respondent Personnel Qualifications and References
- 20.1.4. Schedule 3 – Respondent's Available Equipment, including subcontractors
- 20.1.5. HUB Subcontracting Plan (This requirement is stated on the IFB if applicable)
- 20.2. The following **should** be submitted with the response. Failure by the respondent to submit the documentation listed below **may** disqualify the respondent from further consideration:
  - 20.2.1. Statement from the president, owner or financial officer on company letterhead certifying that the company is in good financial standing, current in payment of all taxes and fees (Ref. Para. 4.2.).
  - 20.2.2. Respondent References
- 21. AWARD
  - 21.1. TxDOT reserves the right to award a single purchase order to the most responsive, responsible respondent meeting the specification. TxDOT may award to a single vendor, multiple vendors, or use any combination that best services the interest of TxDOT.
  - 21.2. TYPES OF AWARD
    - 21.2.1. Single Award: One purchase order awarded to a single vendor.
    - 21.2.2. Multiple Award: A multiple award is the award of multiple purchase orders for the same line item(s) from a single solicitation to two or more vendors to provide the same or similar goods or services.
- 22. POST AWARD MEETING: Vendor may be requested to attend a post award meeting in person or via teleconference with TxDOT within 14 calendar days after the award of the purchase order. The purpose of the meeting is to discuss the terms and conditions of the purchase order and to provide additional information regarding the purchase order.
- 23. CONTRACT ADMINISTRATION: Administration of the purchase order is the responsibility of TxDOT. Procurement Division staff will be responsible for administering the contractual business relationship with the vendor.
  - 23.1. Any proposed changes to work to be performed, whether initiated by TxDOT or the vendor, must receive final written approval in the form of a Purchase Order Change Notice signed by the authorized TxDOT purchasing agent.
  - 23.2. Upon issuance of purchase order, TxDOT will designate an individual who will serve as the Contract Manager and point of contact between the agency and the vendor. The Contract Manager does not have any express or implied authority to vary the terms of the purchase order, amend the purchase order in any way, or waive strict performance of the terms or conditions of the purchase order. This individual's contract management and contract administration responsibilities include, but are not limited to:
    - 23.2.1. Monitoring the vendor's progress and performance and ensuring services conform to established specification requirements.



- 23.2.2. Managing the financial aspects of the contract including approval of payments.
- 23.2.3. Meeting with the vendor as needed to review progress, discuss problems, and consider necessary action.
- 23.2.4. Identifying a breach of contract by assessing the difference between contract performance and non-performance.
- 23.2.5. Other areas as identified by the Comptroller of Public Accounts Contract Management Guide, latest edition.

## ATTACHMENT A - LOCATIONS

District/Section	Maintenance Supervisor Office Contact	Address & Telephone
San Angelo District	Thomas Johnston	4502 Knickerbocker Rd San Angelo TX 76904 325-944-9312
San Angelo Maint.	Michael Mccginnis Sr	2802 Armstrong San Angelo TX 76903 325-653-1780
Garden City Maint.	Christopher Wagner	500 S Main (Rm33) Garden City TX 79139 325-354-2323
Sterling Maint.	Christopher Wagner	6112 North Us 87 Sterling City TX 76951 325-378-2021
Robert Lee Maint.	Douglas Roberts	7785 East S.H. 158 Robert Lee TX 76945 325-453-2890
Ballinger Maint.	Freddy Schmidt	630 FM 2887 North Ballinger TX 76821 325-365-2218
Big Lake Maint.	Johnny Guadarrama	312 West Us 67 Big Lake TX 76932 325-884-2339
Ozona Maint.	Ronald Higginbottom	230 North Sh163 Ozona TX 76943 325-392-2505
Eden Maint.	Jesus Ortegon	1418 West Broadway Eden TX 76837 325-869-2521
Sonora Maint.	Romeo Perez Jr	708 Us 277 North Sonora Tx 76950 325-387-2848
Menard Maint.	Jesus Ortegon	705 Friso Ave Menard TX 76859 325-396-4585
Junction Maint.	Michael Vanwinkle	2126 North Main

## ATTACHMENT A - LOCATIONS

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Junction TX 76849  
325-445-2251

Rocksprings Maint.

Jeffrey Yeaman

1107 S.W. Main  
Rocksprings Tx 78880  
830-683-2188

Leaky Maint.

Joshua Schexnider

913 North Us 83  
Leaky TX 78873  
830-232-5356

**TEXAS DEPARTMENT OF TRANSPORTATION  
TERMS AND CONDITIONS**

**PART 1. INTRODUCTION**

**1.01 GENERAL:** These Terms and Conditions shall apply to all solicitations for goods and/or services [including without limitation any Request for Quote (RFQ), Invitation for Bids (IFB), Request for Offer (RFO) and Request for Proposal (RFP)] offered by the Texas Department of Transportation (TxDOT) (each, a "solicitation") and any purchase order issued by TxDOT ("purchase order" or "contract"). The term "response" or "bid" shall mean the proposal, quote, bid, or offer made to TxDOT in response to a solicitation. The term "respondent" or "bidder" shall mean any party who makes a response to a solicitation, including the vendor. The term "vendor" or "contractor" shall mean the party listed as vendor on the purchase order.

**1.02 STATUTORY AUTHORITY:** This procurement falls under the statutory authority of Government Code Chapter 2151 (commonly known as the "Purchasing Act"), Chapter 2155 (Purchasing: General Rules and Procedures), Chapter 2157 (Purchasing Methods) and Chapter 2161 (Historically Underutilized Businesses, "HUBs"). The purchasing procedures include statutory requirements and those requirements established by rule of the Texas Comptroller of Public Accounts (CPA), Statewide Procurement Division (SPD) as contained in 34 TAC §20.31 and other applicable Federal and State statutes and rules herein cited.

**1.03 TITLE VI ASSURANCE:** TxDOT, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and 49 C.F.R. Part 21 and 28 CFR Section 50.3 (for purposes of this Section and Section 6.10 only, the "Acts" and the "Regulations," respectively), hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin, in consideration for an award.

Nondiscrimination programs require that federal-aid recipients, sub-recipients, and contractors prevent discrimination and ensure nondiscrimination in all of their programs and activities, whether those programs and activities are federally-funded or not.

**1.04 ENVIRONMENTAL IMPACT:** It is the intent of TxDOT to purchase goods, equipment, and services having the least adverse environmental impact within the constraints of statutory purchasing requirements, departmental need, availability, and sound economical considerations in accordance with 34 TAC §20.38.

**1.05 COMPLIANCE WITH LAWS:** The vendor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting the performance of the purchase order, including if applicable, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, prompt payment and licensing laws and regulations. The vendor shall maintain all required licenses, certifications, etc. throughout the term of the purchase order. When required, the vendor shall furnish TxDOT with satisfactory proof of its compliance.

**PART 2. GENERAL INSTRUCTIONS**

**2.01 SPECIFICATIONS**

- (a) The respondent shall carefully examine the solicitation. The respondent shall be responsible for securing any additional information from the TxDOT purchaser needed to gain a clear and full understanding of TxDOT's requirements.
- (b) TxDOT will not be bound by any oral statement or representation contrary to the written specifications of the solicitation. Any revision, clarification, or interpretations pertaining to the solicitation will be in writing and issued by TxDOT as an Addendum. Any changes or



interpretation not in an Addendum will not legally bind TxDOT. Any Addendum must be issued through TxDOT's purchasing department.

- (c) The goods furnished or services performed shall be in accordance with the specifications set forth in the solicitation and with these Terms and Conditions. TxDOT will provide clarifications of the specifications and determine the quality and acceptability of goods furnished or work performed. If the solicitation is for a service, TxDOT will determine the manner of performance, the rate of progress of the work and whether the vendor's performance of the service is acceptable.
- (d) Any catalog, brand name or manufacturer's reference used in the solicitation is descriptive only (not restrictive), and is used to indicate type and quality desired. Responses on brands of like nature and quality will be considered unless advertised as proprietary or sole source under Texas Government Code Section 2155.067. The respondent shall show manufacturer, brand or trade name, and other description of the product offered in response to the solicitation. If offer is for other than example(s) shown in the solicitation, include illustration(s) and complete description(s) of product(s) in the response to the solicitation. If respondent takes no exception to specifications or reference data in the response, the vendor will be required to furnish brand names, numbers, etc., as specified.
- (e) Unless otherwise specified, all goods offered shall be new and in first class condition, including shipping and storage containers. Verbal agreements to the contrary will not be recognized.
- (f) Manufacturer's standard warranty shall apply unless otherwise stated in this solicitation.
- (g) All electrical items shall meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC, or NEMA.

## **2.02 RESPONSE SUBMISSIONS**

- (a) Respondent shall submit the number of responses required in the manner stated in the specification or on the solicitation.
- (b) Response should be submitted on the solicitation form. If submitting multiple responses, each response should be placed in a separate envelope, correctly identified with the solicitation number and opening or closing date. If no solicitation form is provided, responses shall be submitted as required in the specification.
- (c) Response must be time stamped in TxDOT's mail room or hand delivered to the address on the solicitation before the hour and date specified for the solicitation opening or closing. Late responses will not be considered under any circumstances. Late responses will be returned unopened to the respondent.
- (d) Documentation provided with the response should be complete and comprehensive. TxDOT will not be responsible for locating or securing information not included in the response. Failure to furnish required documentation with the response may result in the response being deemed incomplete and non-responsive, resulting in rejection. TxDOT will not be responsible for any expenses relating to responses or development of documentation that may result from this solicitation.
- (e) Failure to sign the solicitation manually will disqualify the response. The person signing the response must have authorization to contractually bind the company. The solicitation response shall include an Employer Identification Number (EIN), full firm name and address of company. The EIN should be entered in the space provided on the solicitation.
- (f) Facsimile (FAX) responses may be submitted to the FAX number provided in the solicitation for procurements less than \$25,000, unless otherwise stated in the solicitation. For procurements \$25,000 and greater, FAX responses will not be considered unless otherwise stated in the solicitation. TxDOT will not be responsible for failure of electronic equipment or operator error. Responses that are late, illegible, incomplete, or otherwise non-responsive will not be considered.

- (g) E-mailed responses may be accepted if stated on the solicitation. E-mailed responses must be in Portable Document Format (pdf), signed by the respondent and attached to the e-mail to be considered for award.
- (h) **RESPONDENT EXCEPTIONS OR CONDITIONED RESPONSES:** Exceptions taken by the respondent to TxDOT's Terms and Conditions or respondent's Terms and Conditions attached to a response will not be considered unless specifically referred to and clearly identified as such within the response. TxDOT may reject a response that takes exception to TxDOT's Terms and Conditions.
- (i) TxDOT reserves the right to accept or reject all or any part of any response, waive minor technicalities and make an award to best serve the interests of the State. TxDOT reserves the right to reject any response not prepared and submitted in accordance with the solicitation requirements.
- (j) Response should indicate number of days required to deliver goods, or begin service (if required), at TxDOT's designated location. Failure to indicate delivery time obligates vendor to complete delivery in fourteen (14) calendar days.
- (k) Samples, when requested must be furnished at no cost to TxDOT. TxDOT may perform tests on samples. If not destroyed in testing, samples will be returned upon request at respondent's expense. Each sample shall be marked with respondent's name and address, and TxDOT solicitation number. Samples shall not be enclosed or attached to a response unless specified in the solicitation.

### **2.03 PRICING**

- (a) TxDOT's automated purchasing system requires pricing to be submitted per unit, multiplied by the quantity and extended. Unit prices shall govern in the event of extension errors. If a trade discount is offered on the solicitation response, it should be deducted and net line extensions should be shown.
- (b) All prices shall be firm for thirty (30) days from the solicitation response date unless otherwise stated in the solicitation. "Discount from list" pricing is not acceptable unless requested. Cash discounts are acceptable, but are not considered in making an award.
- (c) All purchases are on a firm, fixed price basis unless otherwise stated in the solicitation.
- (d) Price(s) shall not increase during the term of the purchase order unless otherwise stated in the solicitation. Vendor shall give price reductions to TxDOT that result from reduced cost to the vendor during the term of the purchase order.
- (e) All prices shall be F.O.B. destination, freight prepaid and allowed. This means the vendor shall prepay and include the freight charges in the unit price.
- (f) Purchases made for State use are exempt from the State and Local Sales tax and Federal Excise tax. Do not include tax in response pricing unless otherwise specified in the solicitation. State Sales tax and Federal Excise Tax Exemption Certificates will be furnished by TxDOT on request.
- (g) The purchase order may contain a "Total Cost Not to Exceed" statement. Vendor shall not perform any work that may exceed either the purchase order total or the not-to-exceed total without prior written authorization from TxDOT.
- (h) Consistent and continued tie response pricing may lead to rejection of the response by TxDOT and investigation for antitrust violations.

**2.04 ADA CONSIDERATIONS AND NOTIFICATION:** Persons with special needs or disabilities who plan to attend any pre-response conference or bid opening and who require auxiliary aids or service should contact the purchaser noted on the solicitation as the point of contact a minimum of three (3) days prior to the meeting so arrangements can be made.

## **2.05 RECEIPT OF PROPOSALS AND BID OPENINGS**

- (a) **NEGOTIATED SOLICITATIONS:** At the time of opening or closing for RFOs or RFPs, only the names of respondents will be announced. Prices will not be disclosed.
- (b) **NON-NEGOTIATED SOLICITATIONS:** At the time of opening or closing for IFBs, names of respondents will be announced. Prices will be disclosed.
- (c) **DISCLOSURE OF RESPONSE:** Information submitted in an accepted response will not be returned to the respondent. The Public Information Act (PIA), Government Code Chapter 552, allows the public to have access to information in the possession of a governmental body through an open records request. Therefore, the respondent shall clearly identify in the response any confidential or proprietary information. Proprietary information identified by the respondent in the response, will be kept confidential by TxDOT to the extent permitted by state law. TxDOT merely raises the exception on behalf of the vendor. TxDOT takes no legal position on disclosure. TxDOT will use best efforts to give the respondent or the awarded vendor an opportunity to present to the Office of the Attorney General its arguments for non-disclosure of its identified confidential or proprietary information.

## **2.06 ALTERATIONS OR WITHDRAWAL OF RESPONSES**

- (a) Any alterations to a response made before the opening or closing date and time shall be initiated by respondent or authorized agent. Response cannot be altered or amended after the opening or closing date and time.
- (b) A response may be withdrawn if requested in writing prior to the opening or closing date and time. A response may be withdrawn from consideration after the opening or closing date only with the approval of TxDOT based on respondent's written, acceptable reason. The response will not be considered for award but will be retained by TxDOT according to the response information confidentiality provision referenced in Section 2.05 (c).

**2.07 DETERMINING AWARD:** A response to a solicitation is an offer to contract with TxDOT based upon the terms, conditions and specifications contained in the solicitation. Responses do not become contracts unless and until they are accepted through an authorized TxDOT designee by issuance of a purchase order. In determining the best value for the state, the purchase price and whether the goods or services meet specifications are the most important considerations, unless otherwise stated in the solicitation.

- (a) **BEST VALUE CRITERIA FOR PURCHASE OF GOODS OR SERVICES:** When specified in the solicitation, the factors listed in Government Code Section 2155.074 will be considered in making a best value award. This section allows TxDOT to apply best value criteria in order to obtain goods and services that provide the best value for TxDOT. Under these guidelines, a respondent is not automatically awarded a purchase order if they submit the lowest bid response. TxDOT will be the sole judge as to which response is the most advantageous and in the best interest of TxDOT.

In determining best value, factors other than price may be considered in making an award. Those factors are:

- (1) life cycle costs;
- (2) the quality and reliability of goods and services;
- (3) the delivery terms;
- (4) indicators of probable vendor performance;
- (5) cost of employee training associated with a purchase;
- (6) the effect of a purchase on agency productivity; and
- (7) other factors relevant to determining best value for the state in the context of a particular purchase.



- (b) **BEST VALUE CRITERIA FOR RFO PURCHASES:** Best value criteria will be used on all information technology equipment or service purchases. Those best value criteria include but are not limited to:
  - (1) compatibility to facilitate exchange of existing data;
  - (2) capacity for expansion and upgrading to more advanced levels of technology;
  - (3) quantitative reliability factors;
  - (4) level of training required to bring end-users to a stated level of proficiency;
  - (5) technical support requirements for maintenance of data across a network platform and management of the networks hardware and software;
  - (6) items, features, etc., which are in addition to requirements listed, as well as factors which, in TxDOT's opinion, add value to the product or service but are not specifically required within the solicitation.
- (c) **NEGOTIATIONS FOR RFO AND RFP PURCHASES:** TxDOT reserves the right to conduct formal negotiations with respondent(s) judged to have the best offer pertaining to price, goods, services and terms.
- (d) TxDOT reserves the right to reject a response from a respondent whose goods or services to TxDOT or other state agencies have been documented as unsatisfactory in providing the same goods or service.
- (e) **TIE RESPONSES:** In case of tie responses, one or more preferences described in Government Code Chapter 2155 and 34 TAC §20.36 and §20.38 will be used to make an award. Tie responses which cannot be resolved by application of one or more preferences shall be made by drawing lots.

**2.08 PREFERENCES:** A respondent may claim a preference under 34 TAC §20.38. To claim a preference, a respondent shall identify the preference on the solicitation or on the response to the solicitation. If the appropriate area on the solicitation or response is not marked, a preference will not be granted unless other documents included in the response show a right to the preference.

**2.09 DELIVERY:** No substitutions or cancellations will be permitted without written approval from TxDOT, which approval must be issued in the form of a purchase order change notice issued by TxDOT's purchasing department.

- (a) If delay is foreseen, vendor shall give written notice to TxDOT. TxDOT has the right to extend delivery or service date if reasons appear valid. Vendor shall keep TxDOT advised at all times of the status of the order. Default in promised delivery or service date (unless vendor has received a written extension of the delivery or service date which has been signed by TxDOT), or failure to meet specifications, authorizes TxDOT to purchase goods or services elsewhere and charge the full increase, if any, in cost and handling to defaulting vendor.
- (b) Delivery shall be made between 8 AM and 4 PM Monday through Friday except on regularly observed state or federal holidays, unless prior approval has been obtained from TxDOT or otherwise stated in the solicitation.
- (c) Receipt of goods or services does not constitute acceptance.
- (d) Goods and materials shall be properly packaged. Damaged goods and materials will not be accepted. If the damage is not readily apparent at the time of delivery, the goods shall be returned to the vendor at no cost to TxDOT. TxDOT reserves the right to inspect goods at a reasonable time subsequent to delivery where circumstances or conditions prevent effective inspection of the goods at the time of delivery.

**2.10 INSPECTIONS AND TESTS:** Goods will be subject to inspection and test by TxDOT to the extent practicable at all times and places. Tests will be performed on samples taken from regular shipment. In the event samples tested fail to meet all conditions and requirements of the specification, the cost of the sample used and the cost of the testing shall be borne by the vendor. Goods which have been delivered and rejected in whole or in part may, at TxDOT's option, be returned to the vendor or held for disposition at vendor's risk and expense. Latent defects may result in revocation of acceptance. Acceptance of services shall be based on attainment of performance in accord with specifications and the purchase order.

**2.11 VENDOR PERFORMANCE:** State agencies shall report a vendor's performance on any purchase of \$25,000 or more from contracts administered by the commission or any other purchase made through an agency's delegated authority or a purchase made pursuant to the authority in Government Code, Title 10, Subtitle D or a purchase exempt from CPA/SPD procurement rules and procedures.

Past Performance: A Respondent's past performance will be measured based upon pass/fail criteria, in compliance with applicable provisions of §2155.074, 2155.075, 2156.007, 2157.003, and 2157.125, Government Code. Respondents may fail this selection criterion for any of the following conditions:

- A score of less than 90% in the Vendor Performance System,
- Currently under a Corrective Action Plan through the CPA,
- Having repeated negative Vendor Performance Reports for the same reason,
- Having purchase orders that have been cancelled or terminated in the previous 12 months for non-performance (i.e. late delivery, etc.).

Vendor performance information is located on the CPA website at:

[http://www.window.state.tx.us/procurement/prog/vendor\\_performance/](http://www.window.state.tx.us/procurement/prog/vendor_performance/)

TxDOT may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System (as authorized by 34 Texas Administrative Code §20.108) TxDOT may examine other sources of vendor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Any such investigations shall be at the sole discretion of TxDOT, and any negative findings, as determined by TxDOT, may result in non-award to the Respondent.

### **PART 3. RESPONDENT AFFIRMATIONS**

**3.01 FALSE STATEMENTS:** Respondent represents and warrants that all statements and information prepared and submitted in response to the solicitation are current, complete, true and accurate. Signing the response to the solicitation with a false statement is a material breach of contract and shall void the submitted response or any resulting contracts, and may result in removal of the respondent from the Centralized Master Bidders List.

**3.02 CONFORMANCE:** The respondent warrants to TxDOT that all goods and services furnished shall conform in all respects to the terms of this purchase order, including any drawings, specifications or standards incorporated herein, and any defects in materials, workmanship, and free from such defects in design. In addition, respondent warrants that goods and services are suitable for and will perform in accordance with the purposes for which they are intended.

**3.03 GRATUITIES:** The respondent has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response to the solicitation.

**3.04 CERTAIN BIDS AND CONTRACTS PROHIBITED:** Under Government Code Section 2155.004, a state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or solicitation on which the bid or contract is based. If the respondent is not eligible, then any contract resulting from the solicitation shall be immediately terminated. Under Section 2155.004, Government Code, the respondent certifies that the individual or business entity named in the bid or contract is eligible

to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

**3.05 ANTITRUST LAWS:** Neither the respondent nor the firm, corporation, partnership, or institution represented by the respondent, or anyone acting for such firm, corporation or institution has (1) violated the antitrust laws of the State of Texas or the federal antitrust laws, or (2) communicated the contents of the response directly or indirectly to any competitor or any other person engaged in the same line of business.

**3.06 DECEPTIVE TRADE PRACTICES; UNFAIR BUSINESS PRACTICES:** The respondent represents and warrants that it has not been the subject of allegations of deceptive trade practices violations under Business & Commerce Code Chapter 17, or allegations of any unfair business practice in any administrative hearing or court suit and that respondent has not been found to be liable for such practices in such proceedings. Respondent certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of deceptive trade practices violations or allegations of any unfair business practices in an administrative hearing or court suit and such officers have not been found to be liable for such practices in such proceedings.

**3.07 COLLUSION:** The respondent has not colluded with, nor received any assistance from, any person who was paid by TxDOT to prepare specifications or a solicitation on which a respondent's bid is based and will not allow any person who prepared the respective specifications or solicitation to participate financially in any contract awarded.

**3.08 INELIGIBILITY UNDER FAMILY CODE:** Under Section 231.006, Family Code, the respondent certifies that respondent and any other individual or business entity named in the contract, bid, or application are eligible to receive the specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. Any respondent subject to Section 231.006 must include the names and Social Security numbers of each person holding at least a 25% ownership interest in the business entity submitting the response. This information must be provided prior to award.

**NOTE:** Pursuant to Government Code Section 403.055 and Family Code Section 231.006, a contract will not be issued to a respondent and warrants will be held by CPA if the vendor owes delinquent child support payment(s), a delinquent state tax, or other tax collected by the CPA.

**3.09 CONTRACTING WITH EX-TXDOT EXECUTIVE DIRECTOR:** Under Government Code Section 669.003, TxDOT may not enter into a contract with the executive director of TxDOT, an individual who was the executive director of TxDOT during the four years before the date of the contract, or with anyone who employs a current or former executive head of a state agency affected by Section 669.003, unless the Transportation Commission approves the contract in an open meeting and notifies the Legislative Budget Board, not later than the fifth day before the date of the vote, of the terms of the proposed contract.

(a) Accordingly, respondent certifies that:

- (1) respondent is not the executive director of TxDOT;
- (2) respondent was not at any time during the past four years the executive director of TxDOT; and
- (3) respondent does not employ a current or former executive director of TxDOT;

or

(b) respondent and TxDOT have complied with the requirements of Government Code Section 669.003 concerning approval of the Transportation Commission and notice to the Legislative Budget Board.

Respondent acknowledges that the contract can be terminated at any time, and payments withheld, if this certification is false.

**NOTE:** If Section 669.003 applies, respondent must provide the following information as an attachment to the solicitation response: Name of applicable former TxDOT executive director, date of separation from TxDOT, position with respondent, and date of employment with respondent. This information is subject to public disclosure under Section 660.004.

**3.10 DEBT TO THE STATE:** Respondent agrees that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support, that is owed to the State of Texas.

### **3.11 RESPONDENT ELIGIBILITY**

- (a) Respondent certifies that the responding entity and its principals are eligible to participate in this transaction and have not been subject to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity, and that respondent is in compliance with the State of Texas statutes and rules relating to procurement, and that respondent is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at: <http://www.epls.gov>.
- (b) Under Section 2155.006(b) of the Texas Government Code, a state agency may not accept a bid or award a contract, including a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been:
  - (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section [39.459](#), Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or
  - (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section [39.459](#), Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005.



Under Section [2155.006](#), Government Code, respondent certifies that the individual or business entity named in the bid or contract is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.

Respondent acknowledges that if TxDOT determines that respondent was ineligible to have the bid accepted or contract awarded under Government Code Section 2155.006, TxDOT may immediately terminate the contract without further obligation to the vendor.

- (c) Respondent certifies that it is not:
  - (1) A person required to register as a lobbyist under Government Code Chapter 305.
  - (2) A public relations firm.
  - (3) A government consultant.

### **3.12 NEPOTISM DISCLOSURE**

- (a) In this section, the term “relative” means:
  - (1) a person's great grandparent, grandparent, parent, aunt or uncle, sibling, niece or nephew, spouse, child, grandchild, or great grandchild, or
  - (2) the grandparent, parent, sibling, child, or grandchild of the persons spouse.
- (b) A notification required by this section shall be submitted in writing to the person designated to receive official notices under this purchase order and by first-class mail addressed to Contract Services Division, Texas Department of Transportation, 125 East 11th Street, Austin Texas 78701. The notice shall specify the vendor's firm name, the name of the person who submitted the notification, the purchase order number, the district, division, office or regional service center of TxDOT that is principally responsible for the purchase order, the name of the relevant vendor employee, the expected role of the vendor employee on the project, the name of the TxDOT employee who is a relative of the vendor employee, the title of the TxDOT employee, and the work location of the TxDOT employee.
- (c) By signing the solicitation the respondent is certifying that the respondent does not have any knowledge that any of its employees or any employees of a subcontractor who are expected to work under this purchase order has a relative who is employed by TxDOT unless the respondent has notified TxDOT of each instance as required by subsection (b).
- (d) If the vendor learns at any time that any of its employees or that any of the employees of a subcontractor who are performing work under this purchase order have a relative who is employed by TxDOT, the vendor shall notify TxDOT under subsection (b) of each instance within thirty days of obtaining that knowledge.
- (e) If the vendor violates this section, TxDOT may terminate the purchase order immediately for cause, may impose any sanction permitted by law, and may pursue any other remedy permitted by law.

## **PART 4. GENERAL TERMS AND CONDITIONS**

### **4.01 ORDERS**

- (a) Only authorized TxDOT purchasers have the authority to place orders for goods and services. Purchase orders must be issued by a TxDOT purchaser prior to a vendor providing the goods or service. The only exceptions are payment card orders and bona fide emergencies. In the case of an emergency, the TxDOT Procurement Division will confirm such orders with a signed purchase order.
- (b) Vendor acceptance of a purchase order and delivery of goods or services without an approved purchase order number or release number issued by TxDOT may result in the rejection of delivery, return of goods at the vendor's cost and also result in non-payment.

**4.02 FUNDING:** Any purchase order resulting from the solicitation is contingent upon the availability of funding, and is subject to termination without penalty, either in whole or in part, if funds become unavailable through lack of appropriations, legislative or executive budget cuts, amendment of the Appropriations Act, state agency consolidations, or any other disruptions of current appropriations. In addition, state agencies are prohibited from incurring obligations in excess of amounts lawfully appropriated by the Texas Legislature over the course of a biennium.

**4.03 INVOICING**

- (a) Invoices must be submitted not later than the 15<sup>th</sup> day of the month after the goods have been delivered or services have been provided. No payment shall be made under the purchase order without the prior submission of detailed, correct invoices which comply with the requirements set forth in this Section 4.03. Invoices should be sent to the address shown on the purchase order. The vendor may receive more detailed instructions on invoicing after award.
- (b) The invoice must at a minimum show the following:
  - (1) Vendor name as it appears on the purchase order.
  - (2) Remit to address.
  - (3) Employer identification number (EIN) Federal Tax I.D.
  - (4) The complete PO number.
  - (5) Telephone number.
  - (6) Description of item or services as it appears on the PO in the same order as listed on purchase order. Item numbers must correspond with the item numbers on the PO.
  - (7) Unit, unit price and extended price of each line item.
  - (8) Grand total.
  - (9) Shipment date of merchandise or date of service.
  - (10) Any additional requirements as stated in the solicitation or specification.

**4.04 PAYMENT:** Payment for goods or services purchased with State-appropriated funds is made by warrants or by Direct Deposit from the State Treasury. Direct Deposit is the preferred method of payment. No penalty for late payment will be incurred by TxDOT if payment is made in thirty (30) days or less from receipt of goods, services or a correct invoice, whichever is later. Payments under this contract are subject to the availability of appropriated funds. Vendor acknowledges and agrees that payments for services provided under this contract are contingent upon TxDOT's receipt of funds appropriated by the Texas Legislature.

Additional information and a Direct Deposit Authorization application may be found at:  
<https://fm.x.cpa.state.tx.us/fm/payment/index.php>.

Payment will be made in accordance with Government Code Chapter 2251:

- (a) On a monthly basis and within thirty (30) days from receipt of a correct invoice for TxDOT accepted goods or services.

**OR**

- (b) As otherwise stated in the solicitation document.

**OR**

- (c) The service was completed to the satisfaction of TxDOT, and within thirty (30) days from receipt of a correct invoice or billing statement.

NOTE: Texas Department of Transportation (TxDOT) offers an opportunity to participate in its Early Payment Program to accelerate payments in exchange for a discount. Additional information may be

found at the following website: <http://www.txdot.gov/business/vendors/epp.html> or the Priority Invoice and Early Payment Program form (Appendix B)

#### **4.05 INTELLECTUAL PROPERTY**

- (a) All intellectual property developed and created in the course of the services rendered pursuant to the purchase order are works for hire and all intellectual property rights, including but not limited to publication rights, copyrights, trademarks, patents and trade secrets, to all products and materials developed and created pursuant to the purchase order shall be exclusively owned by TxDOT. Vendor shall provide TxDOT all assistance required to perfect such intellectual property rights without any charge or expense beyond those amounts payable for services rendered under the Contract. To the extent that title to any work created under the Contract is held by operation of law to not vest exclusively in TxDOT, such work shall be hereby irrevocably assigned to TxDOT.
- (b) Vendor shall ensure that TxDOT's intellectual property rights, including but not limited to publication rights, copyrights, trademarks, patents and trade secrets, are secured from all suppliers, contractors and subcontractors.
- (c) When applicable, each vendor shall obtain necessary licenses, copyrights, trademarks or patents for TxDOT's use.
- (d) The vendor shall not assert rights at common law or in equity or establish any claim to TxDOT's intellectual property, including, but not limited to, licenses, claiming common law ownership of intellectual property, obtaining registrations for copyrights, trademarks, trade secrets or patents for any intellectual property developed in performance of the services authorized.
- (e) THE VENDOR AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND TXDOT AND THE STATE FROM CLAIMS INVOLVING INFRINGEMENT OF THIRD PARTIES' LICENSES, TRADEMARKS, COPYRIGHTS, PATENTS, TRADE SECRETS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS AS SET FORTH IN SECTION 4.14 BELOW.

#### **4.06 ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS:** As required by 1 TAC Chapter 213:

- (a) Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. Vendor represents and warrants that technology to be provided to TxDOT and for TxDOT is in compliance with these requirements.
- (b) Vendor shall provide Texas Department of Information Resources with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product or service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Vendors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide the Texas Department of Information Resources with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at: <http://www.section508.gov/>.

**4.07 SITE VISITS:** Prior to and after award of the purchase order, designated TxDOT representatives may conduct unannounced visits to inspect the vendor's and its subcontractor's facilities during normal business hours to monitor compliance in accordance with TxDOT specifications or carry out performance audits of the service.



**4.08 NON-WAIVER OF RIGHTS:** Nothing in this contract shall be construed as a waiver of the state's sovereign immunity. This contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under this contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. TxDOT does not waive any privileges, rights, defenses, or immunities available to TxDOT by entering into this contract or by its conduct prior to or subsequent to entering into this contract.

**4.09 LIMITATION ON AUTHORITY; NO OTHER OBLIGATIONS:** Vendor shall have no authority to act for or on behalf of TxDOT or the State of Texas except as expressly provided for in this purchase order. Vendor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas or TxDOT.

**4.10 VENUE AND JURISDICTION; APPLICABLE LAW:** Venue for any suit concerning the solicitation and any resulting purchase order shall be in a court of competent jurisdiction in Travis County, Texas. The solicitation and any resulting purchase order shall be governed by, construed in accordance with, and interpreted under the laws of the State of Texas.

**4.11 VENDOR ASSIGNMENTS:** Vendor hereby assigns TxDOT any and all claims for overcharges associated with this contract which arise under the antitrust laws of the United States (15 U.S.C.A. Chapter 1)), and which arise under the antitrust laws of the State of Texas (Business & Commerce Code, Title 2, Chapter 15).

**4.12 FORCE MAJEURE:** TxDOT may grant relief for time only from performance of the purchase order if the vendor is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the vendor (any such event or cause referred to herein as "force majeure"). The burden of proof for the need of such relief shall rest upon the vendor. To obtain relief based on force majeure, the vendor shall file a written request with TxDOT describing the events, dates and effect of the events on vendor's ability to perform according to the purchase order. Vendor must inform TxDOT in writing within 3 business days of the existence of such force majeure; failure to do so will waive the defense provided in this Section 4.13.

**4.13 RIGHT TO AUDIT**

- (a) The State Auditor's Office, pursuant to Section 2262.154, ("state auditor") may conduct an audit or investigation of the vendor or any other entity or person receiving funds from the state directly under this purchase order or indirectly through a subcontract under this purchase order. Acceptance of funds directly under this purchase order or indirectly through a subcontract under this purchase order acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the vendor or any other entity that is the subject of an audit or investigation by the state auditor agrees to provide the state auditor access to any information the state auditor considers relevant to the investigation or audit.
- (b) TxDOT's internal auditors shall have the right to conduct an audit or investigation of the vendor or any other person receiving funds directly under this purchase order or indirectly through a subcontract under this purchase order. TxDOT has the right to audit the vendor's books and records pertaining to the service during normal work hours. Vendor or any other entity that is the subject of an audit or investigation by TxDOT agrees to provide TxDOT's internal auditor access to any information TxDOT considers relevant to the investigation or audit.
- (c) Vendor will ensure that this section concerning the authority of the state auditor and TxDOT to audit funds received indirectly by subcontractors through the Vendor and the requirement to cooperate is included in any subcontract it awards.

**4.14 INDEMNIFICATION: Acts or Omissions**

Vendor shall indemnify and hold harmless the State of Texas and TxDOT, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, VENDORS, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL



RELATED COSTS, ATTORNEY FEES, COURT COSTS AND EXPENSES arising out of, or resulting from, any acts or omissions of the Vendor or its agents, employees, subcontractors, order fulfillers, or suppliers of subcontractors in the execution or performance of the contract. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH TXDOT AND THE OFFICE OF THE ATTORNEY GENERAL WHEN THE STATE OF TEXAS OR TXDOT IS NAMED AS A DEFENDANT IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM TXDOT AND THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND TXDOT AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

Infringement:

- (a) Vendor shall indemnify and hold harmless the State of Texas and TxDOT, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, VENDORS, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, trade secrets, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND TXDOT AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES AND COURT COSTS. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH TXDOT AND THE OFFICE OF THE ATTORNEY GENERAL WHEN THE STATE OF TEXAS OR TXDOT ARE NAMED AS A DEFENDANT IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM TXDOT AND THE OFFICE OF THE ATTORNEY GENERAL.
- (b) Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by:
  - (1) any intellectual property right owned by or licensed to TxDOT, or
  - (2) any use of the product or service by TxDOT that is not in conformity with the terms of any applicable license agreement between vendor and TxDOT.
- (c) If Vendor becomes aware of an actual or potential claim, or TxDOT provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against TxDOT, shall), at Vendor's sole option and expense;
  - (1) procure for TxDOT the right to continue to use the affected portion of the product or service, or
  - (2) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that TxDOT's use is non-infringing.

**Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity**

- (a) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. TXDOT AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY.

- (b) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS TXDOT, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, VENDORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE, WORKERS' COMPENSATION, AND/OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY IN OR ARISING OUT OF ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES AND COURT COSTS. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH TXDOT AND THE OFFICE OF THE ATTORNEY GENERAL WHEN THE STATE OF TEXAS OR TXDOT IS NAMED AS A DEFENDANT IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM TXDOT AND THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND TXDOT AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

**4.15 DAMAGE TO TXDOT PROPERTY:** The vendor shall be liable for damage to TxDOT's equipment, workplace and its contents resulting from the vendor's or the vendor's subcontractors work or negligence in performance of the work by the vendor's or subcontractor's personnel or equipment.

**4.16 CONFIDENTIALITY CLAUSE:** TxDOT is governed by laws and regulations that make certain information confidential as well as specifying how public information is released. Notwithstanding any provision to the contrary, the vendor understands that TxDOT will comply with the Texas Public Information Act, Government Code Chapter 552, as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. The vendor, its employees or subcontractors shall not divulge any information relative to TxDOT business at any time to a third party without the prior written approval of TxDOT. The vendor will notify TxDOT within 24 hours of receipt of any third party requests for information that was provided by TxDOT for use in performing the purchase order, including the purchase order itself. All information created by or accessible to a vendor while providing a good or service for TxDOT is confidential. If applicable to a service, upon award of a purchase order, the vendor may be required to complete and sign TxDOT Form 1828b, Information Resource Security Compliance and Confidentiality Agreement. Contractor is required to make any information created or exchanged with the state pursuant to the contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state. Vendor agrees to provide the information to the public in any format reasonably required by TxDOT.

**4.17 BUY TEXAS:** Pursuant to Section 2155.4441 of the Government Code, the vendor shall buy products and materials produced in the State of Texas for use in providing services authorized in this contract when such products and materials are available at a comparable price and in a comparable period of time when compared to products and materials produced outside the state.

**4.18 COMPETENCE OF VENDOR:** To be entitled to consideration, the vendor shall have available the necessary organization and facilities to fulfill all the requirements under the purchase order. Only personnel trained to perform the solicited services or, if applicable, licensed to perform such services shall be employed under and for the purchase order. Vendor shall obtain any other licenses or permits or both as required for the performance of the service.

**4.19 CHANGES IN WORK:** If TxDOT determines it necessary to require corrections to completed work due to errors made by the vendor, the vendor shall correct the work at no additional cost to TxDOT. For negotiated contracts, if TxDOT requires changes in previously approved and completed work, the vendor shall make such changes as directed by TxDOT and will be compensated for such at the same rates established by each vendor's hourly rates. Any changes must be approved in advance in writing through a purchase order change notice issued by TxDOT's purchasing department.

**4.20 IT SERVICE CONTRACTS SECURITY:** The vendor will implement appropriate administrative, physical and technical safeguards which reasonably and appropriately protect the confidentiality, integrity, and availability of services provided to TxDOT. The vendor will immediately report to TxDOT any security incident which it becomes aware. The vendor will submit for approval by TxDOT and conform its policies and procedures relating to the implementation of security safeguards to comply with TxDOT's information resources security program pursuant to Title 1, Texas Administrative Code, Section 202.

**4.21 NOTICES:** Any written notices required under the resulting purchase order will be by either hand delivery to Vendor's office address specified on Page 1 of the purchase order or by U.S. Mail, certified, return receipt requested, to TxDOT, 125 E. 11th Street, Austin, TX 78701-2483. Notice will be effective on receipt by the affected party. Either party may change the designated notice address in this Section by written notification to the other party.

**4.22 ACCESS TO INFORMATION:** The vendor is required to make any information created or exchanged with TxDOT pursuant to this purchase order, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to TxDOT. At a minimum the formats are to include portable document format (PDF) and HTML.

**4.23 PUBLIC DISCLOSURE:** No public disclosures or news releases pertaining to this contract shall be made without prior written approval of the Texas Department of Transportation.

## **PART 5. INSURANCE**

**5.01 PRIOR TO PURCHASE ORDER AWARD:** The vendor shall provide the required TxDOT insurance form upon written notice from TxDOT. Vendor shall not perform services under the purchase order until this form is received by TxDOT. Failure to provide proof of insurance within the time frame requested by TxDOT may result in the vendor's response being declared non-responsive and the purchase order being awarded to the next responsive, responsible respondent.

**5.02 DURING TERM OF PURCHASE ORDER:** The vendor shall maintain all required insurance coverage throughout the term of the purchase order. The vendor shall provide a correct TxDOT insurance form each time its insurance is renewed or updated. Failure to provide this form promptly may be cause for discontinuance of the work and termination of the purchase order.

**5.03 WAIVER OF SUBROGATION ENDORSEMENT:** The vendor's Worker's Compensation insurance policy shall have a waiver of subrogation endorsement in favor of TxDOT. TxDOT will allow deductible policies. The vendor shall pay the deductible amount.

**5.04 WORKERS' COMPENSATION INSURANCE:** Amounts of coverage are minimums and notice provisions are statutory (Texas Labor Code Chapter 406 and Title 28 Texas Administrative Code Chapter 110). The vendor is responsible for both Federal and State Unemployment Insurance coverage and Standard Workers' Compensation Insurance coverage:

**5.05 WORKERS' COMPENSATION INSURANCE FOR BUILDING AND CONSTRUCTION SERVICES:** The vendor is responsible for providing Workers' Compensation Insurance for Building and Construction Services. Building or construction includes:

- (a) erecting or preparing to erect a structure, including a building, bridge, roadway, public utility facility, or related appurtenance;
- (b) remodeling, extending, repairing, or demolishing a structure; or
- (c) otherwise improving real property or an appurtenance to real property through similar activities.

The vendor shall provide workers' compensation insurance for building and construction services in accordance with Title 28 Texas Administrative Code §110.110(c)(7).

- (a) Definitions (applicable only to this Section 5.05):

- (1) Certificate of coverage ("certificate") – A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81,

TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

- (2) Duration of the project - includes the time from the beginning of the work on the project until the vendor's/person's work on the project has been completed and accepted by the governmental entity.
  - (3) Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the vendor has undertaken to perform on the project, regardless of whether that person contracted directly with the vendor and regardless of whether that person has employees. This includes, without limitation, independent vendors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
- (b) The vendor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the vendor providing services on the project, for the duration of the project.
  - (c) The Vendor must provide a certificate of coverage to TxDOT prior to being awarded the purchase order.
  - (d) If the coverage period shown on the vendor's current certificate of coverage ends during the duration of the project, the vendor must, prior to the end of the coverage period, file a new certificate of coverage with TxDOT showing that coverage has been extended.
  - (e) The vendor shall obtain from each person providing services on a project, and provide to TxDOT:
    - (1) a certificate of coverage, prior to that person beginning work on the project, so TxDOT will have on file certificates of coverage showing coverage for all persons providing services on the project; and
    - (2) no later than seven days after receipt by the vendor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
  - (f) The vendor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
  - (g) The vendor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the vendor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
  - (h) The vendor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
  - (i) The vendor shall contractually require each person with whom it contracts to provide services on a project, to:
    - (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;



- (2) provide to the vendor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
  - (3) provide the vendor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - (4) obtain from each other person with whom it contracts, and provide to the vendor:
    - (a) a certificate of coverage, prior to the other person beginning work on the project; and
    - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
  - (6) notify TxDOT in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
  - (7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- (j) By signing the purchase order or providing or causing to be provided a certificate of coverage, the vendor is representing to TxDOT that all employees of the vendor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the vendor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- (k) The vendor's failure to comply with any of these provisions is a breach of contract by the vendor which entitles TxDOT to declare the purchase order void if the vendor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

**5.06 COMMERCIAL GENERAL LIABILITY INSURANCE:** Bodily Injury/Property Damage. Required coverage shall at a minimum, be inclusive of the limits listed on the insurance form noted on the solicitation.

**5.07 COMMERCIAL AUTOMOBILE POLICY:** Required coverage shall at a minimum, be inclusive of the limits listed on the insurance form noted on the solicitation.

## **PART 6. VENDOR PERSONNEL MANAGEMENT**

**6.01 INDEPENDENT CONTRACTOR:** It is expressly understood and agreed to by both parties that TxDOT is contracting with the vendor as an independent contractor. As such, vendor understands and agrees that individuals performing services in connection with the purchase order are not state employees, and that the vendor shall be responsible and liable for the safety, injury, and health of its and its subcontractor's working personnel while its employees or subcontractor's employees are performing work for TxDOT. Should the vendor subcontract any of the services required in the purchase order, the vendor expressly acknowledges and agrees that TxDOT is in no manner liable to any subcontractor of the vendor. In no event shall this provision relieve vendor of the responsibility for ensuring that all services rendered under all subcontracts are rendered in compliance with the contract.

**6.02 WORK HOURS:** All work by the vendor shall be performed between the hours of 8:00 AM and 5:00 PM, Monday through Friday except on regularly observed state or federal holidays unless otherwise specified in the solicitation.

**6.03 ALCOHOL AND DRUG FREE WORKPLACE:** TxDOT is committed to maintaining an alcohol and drug free workplace. Possession, use of or being under the influence of alcohol or controlled substances by vendor's employees while in the performance of any service is prohibited. Violation of this requirement shall constitute grounds for termination of the purchase order. Vendor's employees shall comply with TxDOT's policy prohibiting smoking in TxDOT buildings.

**6.04 REPLACEMENT OF PERSONNEL:** If TxDOT determines a vendor's employee or vendor subcontractor performing under this purchase order is unable to perform in accordance with the service requirements or to communicate effectively, or is in the opinion of TxDOT, otherwise objectionable, the vendor shall immediately remove that employee or subcontractor.

**6.05 LABOR/MATERIAL/EQUIPMENT:** The vendor shall provide all labor, material, and equipment necessary to furnish the goods or perform the service(s) throughout the term of the purchase order. All employees of the vendor shall be a minimum of seventeen (17) years of age and experienced in the type of work to be performed. No visitors, wives, husbands, children or other relatives of the vendor's employees will be allowed on state property during working hours, unless they are bona fide employees of the vendor.

**6.06 ENGLISH SPEAKING STAFF:** The vendor shall at all times have a minimum of one English speaking employee on the job. All employees shall be well-groomed and appropriately dressed when on TxDOT property.

**6.07 FELONY CRIMINAL CONVICTIONS:** Vendor represents and warrants that neither vendor nor any of vendor's employees have been convicted of a felony criminal offense, or that, if such a conviction has occurred, vendor has fully advised TxDOT as to the facts and circumstances surrounding the conviction and vendor agrees to defend, hold harmless, and indemnify TxDOT from any loss or claim due to any such employees.

**6.08 SUBCONTRACTING REQUIREMENTS:** In accordance with Government Code Sections 2161.181-182 and 34 TAC §20.11 and pursuant to the CPA Historically Underutilized Business (HUB) Rules, 34 TAC, §20.14, and Transportation DBE/HUB/SBE Rules, 43 TAC 9.50- 57 (relating to Disadvantaged Business Enterprises, HUB and Small Business Enterprises, DBE/HUB/SBE) all state agencies entering into a contract with an expected value of \$100,000 or more over the life of the contract (including renewals) shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine if it is probable for subcontracting opportunities under the contract. If subcontracting opportunities are probable the state agency will state such probability in its bids, proposals, offers, or other applicable expression of interest and require the submission of a HUB Subcontracting Plan (HSP). The HSP, if acceptable to the agency, will be a provision of the contract. The HSP, if required, may be found at: <http://www.dot.state.tx.us/gsd/purchasing/purchasing.htm>.

**6.09 PAYMENT OF SUBCONTRACTORS:** As provided by Government Code Section 2251.022 Time for Payment by Vendor:

- (a) A vendor who receives a payment from a governmental entity shall pay a subcontractor the appropriate share of the payment not later than the 10th day after the date the vendor receives the payment.
- (b) The appropriate share is overdue on the 11th day after the date the vendor receives the payment.

**6.10 VENDOR TITLE VI AFFIRMATIONS:** The vendor affirms the following, with regard to the work performed by it under the purchase order:

- (a) Vendor and its subcontractors shall not discriminate on the grounds of race, color, national origin, sex, age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The vendor shall not participate either directly or indirectly in any discriminatory employment practices. Failure by the vendor to carry out these requirements is a material breach of any contract awarded and may result in the termination of the contract or such other remedy as TxDOT deems appropriate.
- (b) In any solicitations for subcontractors, including procurements of materials or leases of equipment and in all solicitations either by competitive bidding or negotiation made by the vendor for work to

be performed under a subcontract, each potential subcontractor or supplier shall be notified by the vendor of the vendor's and subcontractor's obligations under its purchase order relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.

- (c) During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to collectively in this subsection (c) as the "contractor") agrees as follows:
- (1) Compliance with Regulations: The contractor will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
  - (2) Nondiscrimination: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
  - (3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
  - (4) Information and Reports: The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by TxDOT or the Federal Highway Administration (FHWA) to be pertinent and to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor will so certify to TxDOT or the FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.
  - (5) Sanctions for Noncompliance: In the event of a contractor's noncompliance with the nondiscrimination provisions of this contract, TxDOT will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
    - a) withholding payments to the contractor under the contract until the contractor complies; and/or
    - b) cancelling, terminating, or suspending a contract, in whole or in part.
  - (6) Incorporation of Provisions: The contractor will include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as TxDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance. Provided, that if the contractor becomes involved in litigation with, or is threatened with litigation by, a subcontractor or supplier because of such direction, the contractor may request TxDOT to enter into any litigation to protect the interests of TxDOT. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

- (d) The contractor agrees to comply with the provisions of Appendix A attached hereto, which is incorporated by reference and made a part hereof.

**6.11 E-VERIFY:** Pursuant to Executive Order RP-80, Vendor certifies and ensures that for all contracts for services, Vendor shall, to the extent permitted by law, utilize the United States Department of Homeland Security's E-Verify system during the term of this agreement to determine the eligibility of:

- (a) All persons employed by Vendor during the term of this agreement to perform duties within the State of Texas; and
- (b) All persons, including subcontractors, assigned by Vendor to perform work pursuant to this agreement.

Violation of this provision constitutes a material breach of this agreement.

## **PART 7. DISPUTE RESOLUTION**

**7.01 DISPUTE RESOLUTION:** In accordance with Government Code, Chapter 2260, TxDOT has established a dispute resolution process in 43 Texas Administrative Code §§9.1 and 9.2 to resolve disputes that may arise between TxDOT and the vendor under the purchase order in 43 Texas Administrative Code §§9.1 and 9.2 (the dispute resolution process described by Government Code Chapter 2260 and 43 TAC §§9.1 and 9.2 referred to herein as the "dispute resolution process"). The dispute resolution process shall be used by TxDOT and the vendor to resolve disputes arising under the purchase order, including without limitation any claim for breach of contract. The contested case process provided in Chapter 2260 is the vendor's sole and exclusive process for seeking a remedy for an alleged breach of contract by TxDOT if the parties are unable to resolve their disputes as described above. Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practices and Remedies Code. Neither the execution of the contract by TxDOT nor any other conduct of any representative of TxDOT relating to the contract shall be considered a waiver of sovereign immunity to suit. Notwithstanding any provision of the purchase order to the contrary, unless otherwise agreed in writing by TxDOT, the vendor shall continue performance and shall not be excused from performance during the period of contract claim or dispute is pending; however, the vendor may suspend performance during the pendency of such claim or dispute if the vendor has complied with all provisions of Section 2251.051, Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

## **PART 8. CONTRACT TERMS**

**8.01 TERM OF CONTRACT:** The term of the contract shall be as stated on the purchase order.

**8.02 ORDER OF PRECEDENCE:** In the event of conflicts or inconsistencies between this contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the order specified on the purchase order.

### **8.03 TERMINATION OF A PURCHASE ORDER**

- (a) **FOR CAUSE:** If vendor fails to provide a good or service according to the provisions of the purchase order or fails to comply with any term or condition of the purchase order, or if any representation or certification made in the purchase order or any related document is false, incomplete or inaccurate, TxDOT may immediately terminate the purchase order upon written notice to the vendor. TxDOT may, at its option, re-solicit or award the purchase order to the next lowest responsive and responsible respondent. The defaulting vendor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work unless the specification or scope of work is significantly changed. If vendor defaults on the purchase order, TxDOT may purchase the goods or service elsewhere and charge any increase in cost to the defaulting vendor. TxDOT may impose sanctions, debar or suspend the vendor for abandonment or default(s) on the purchase order. Termination is not an exclusive remedy, but will be in addition to any other remedies TxDOT may have by law, in equity, or under the contract. TxDOT may exercise any other right, remedy or privilege which may be available to it under applicable law or may proceed by appropriate court action to enforce the provisions of the contract. The exercise of any of the foregoing remedies will not constitute a termination of the



contract unless TxDOT notifies the vendor in writing prior to the exercise of such remedy. The vendor shall be responsible for all costs and expenses, including court costs, incurred by TxDOT with respect to the enforcement of any of the remedies listed herein.

- (b) **FOR CONVENIENCE:** The purchase order may be terminated in whole or in part, without penalty, by either party by providing thirty (30) days written notice to the other party. In the event of such termination, the vendor shall, unless otherwise agreed in writing, cease all work immediately upon the effective date of termination. TxDOT will be liable only for payments for goods or services ordered before the termination date. With regard to services, TxDOT will pay the vendor the purchase order price prorated for acceptable service performed up to the date specified in the notice of termination. Termination under this paragraph shall not relieve the vendor of any obligation or liability that has occurred prior to termination. The vendor shall refund any balance of unused prepaid funds.

**8.04 SALE OR ASSIGNMENT:** The purchase order is void if sold or assigned to another company without written approval from TxDOT. Written notification of changes to company name, address, telephone number, etc. shall be provided to TxDOT as soon as possible but not later than thirty (30) days from the date of change.

**8.05 RENEWAL OF BLANKET PURCHASE ORDER FOR GOODS:** A blanket purchase order for goods may be renewed for up to three additional like periods of time at the original price, terms and conditions, and any approved changes. Any changes will be clearly detailed in the amended purchase order.

**8.06 RENEWAL OF PURCHASE ORDER FOR SERVICES:** The purchase order may be renewed for up to three additional like periods of time at the same terms and conditions, or as otherwise stated in the solicitation, provided both parties agree in writing to do so prior to the expiration of the purchase order.

**8.07 RENEWAL OF PURCHASE ORDER FOR NEGOTIATED GOODS OR SERVICES**

- (a) The purchase order may be renewed for up to three additional like periods of time at the same terms and conditions, or as otherwise stated in the solicitation, provided both parties agree in writing to do so prior to the expiration of the purchase order.
- (b) For purchase orders issued using the RFP or RFO method of purchase, TxDOT reserves the right to negotiate additional time if circumstances require. TxDOT and the vendor may negotiate additional time and price based on the deliverable or need in the best interest of the state and TxDOT.

**8.08 EXTENSION OF PURCHASE ORDERS**

- (a) TxDOT reserves the right to extend a purchase order for time only past the stated term to allow the vendor to complete the requirements or to accommodate unanticipated events or requirements prior to the expiration of the purchase order.
- (b) A purchase order in its final renewal period may be further extended for time and money for a period up to ninety (90) days at the option of TxDOT.
- (c) The vendor may request a time only extension of a purchase order by submitting written justification to TxDOT. TxDOT will approve or decline the request for extension in writing. An extension will only be effective if it is issued by the TxDOT purchasing department in the form of a purchase order change notice.

**8.09 SEVERABILITY CLAUSE:** In the event that any provision(s) of this purchase order may later be determined to be invalid, void, or unenforceable, then the remaining provisions of this purchase order shall remain in full force and effect.

**8.10 BINDING EFFECT AND SURVIVAL OF OBLIGATIONS**

- (a) By executing this purchase order, the vendor binds itself, its respective successors and assignees, to the faithful performance of the terms and conditions and provisions of the purchase order.

- (b) Expiration or termination of the purchase order for any reason shall not release vendor from any liabilities or obligations set forth in the terms and conditions and purchase order or any work order that are expressly stated to survive any such expiration or termination or which by their nature are intended to be applicable following such expiration or termination, including any and all provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, invoice and fees verification. Upon expiration or termination of the purchase order for any reason, TxDOT shall retain ownership of all associated work products and documentation obtained from or created by the vendor under the purchase order. Vendor shall deliver all documents or other work product to TxDOT upon request, including original versions if so specified in the request.
- (c) The term of service stated on the purchase order is binding on the vendor regardless of the term on the originating agency contract or its purchase order.

## Appendix A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to in this Appendix A as the "contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

### **Pertinent Nondiscrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).



# HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

**NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b)**

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.13 are:

- **11.2 percent for heavy construction other than building contracts,**
- **21.1 percent for all building construction, including general contractors and operative builders' contracts,**
- **32.9 percent for all special trade construction contracts,**
- **23.7 percent for professional services contracts,**
- **26.0 percent for all other services contracts, and**
- **21.1 percent for commodities contracts.**

## - - Agency Special Instructions/Additional Requirements - -

In accordance with 34 TAC §20.14(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent does not have a continuous contract\* in place for more than five (5) years shall qualify for meeting the goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.

Texas Department of Transportation

## SECTION-1 RESPONDENT AND REQUISITION INFORMATION

- a. Respondent (Company) Name: East Pointe Holdings, Inc. State of Texas VID #: 175290587  
 Point of Contact: Kenneth Hanon Phone #: 903-917-6405  
 E-mail Address: kebholding@yahoo.com Fax #: \_\_\_\_\_
- b. Is your company a State of Texas certified HUB? ☐ - Yes ☐ - No
- c. Requisition #: 601340000017319 Bid Open Date: 1/31/17  
 (mm/dd/yyyy)

Enter your company's name here East Pointe Holdings, Inc.Requisition #: 60134000000173**SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS**

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, including contracted staffing, goods, services, transportation and delivery will be subcontracted. Note: In accordance with 34 TAC §20.11, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

☐ - *Yes*, I will be subcontracting portions of the contract. (If *Yes*, complete Item b of this SECTION and continue to Item c of this SECTION.)

☒ - *No*, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods, services, transportation and delivery. (If *No*, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUBs).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a "continuous contract" in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to HUBs with which you have a "continuous contract" in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs
1	Hauling Services	%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <http://windc.state.tx.us/procurement/proc/hub/hub-subcontracting>.)

c. Check the appropriate box (Yes or No) that indicates whether you will be using only Texas certified HUBs to perform all of the subcontracting opportunities you listed in SECTION 2, Item b.

☐ - *Yes* (If *Yes*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)

☐ - *No* (If *No*, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract with Texas certified vendors with which you do not have a "continuous contract" in place with for more than five (5) years meets or exceeds the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."

☐ - *Yes* (If *Yes*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)

☐ - *No* (If *No*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed.)

**"Continuous Contract":** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor where the HUB vendor provides the prime contractor with goods or service, to include transportation and delivery under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.



Enter your company's name here: East Pointe Holdings, Inc.Requisition # 60134000001731**SECTION-3 SELF PERFORMING JUSTIFICATION** (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SE

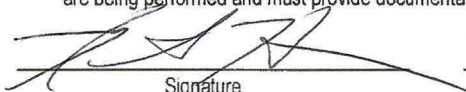
If you responded "No" to SECTION 2, Item a, in the space provided below **explain how** your company will perform the entire contract with its own employees, supplies, materials and/or equipment, to include transportation and delivery.

Vendor has enough resources to perform the required services without subcontractors. Vender has performed similiar services with Brownwood, Paris, Ft Worth Maintenance service.

**SECTION-4: AFFIRMATION**

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the award contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percent of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verify compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/progressassessmentrpt.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or dismissal of subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, the respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.



Signature

Kenneth Hanon

Printed Name

President

Title

1/28/17Date  
(mm/dd/yyyy)**Reminder:**

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each the subcontracting opportunities you listed in SECTION 2, Item b.